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BY THE U.S. GENERAL ACCOUNTING OFFICE

## Report To The Secretary Of Agriculture

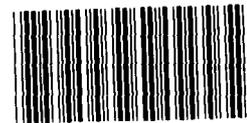
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# Decisionmaking Process For Farm Program Policies Needs To Be Improved

The Agricultural Stabilization and Conservation Service (ASCS) makes payments to producers of major commodities when average market prices are lower than set, or target, prices. In 1983, as provided by law, producers were advanced a portion of these payments. Subsequently, because of higher market prices, it was determined that the payments made to corn and grain sorghum producers had to be repaid. ASCS, however, decided to permit certain corn and grain sorghum producers to defer repayment for up to 6 months.

ASCS' decision was made without consideration or analysis of the possible costs involved and without the benefit of a prior legal review by Agriculture's Office of General Counsel. GAO is studying whether this decision complies with applicable laws that call for the prompt repayment of moneys owed the government. GAO also found two other examples of ASCS decisions on different issues that were made without a prior legal review. In both instances legal problems arose that might have been avoided had appropriate prior legal review been obtained.

GAO makes recommendations to improve ASCS' decision-making process.



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UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

RESOURCES, COMMUNITY,  
AND ECONOMIC DEVELOPMENT  
DIVISION

B-215490

The Honorable John R. Block  
The Secretary of Agriculture

Dear Mr. Secretary:

We recently completed a review of the Agricultural Stabilization and Conservation Service's (ASCS) policy decision to defer the repayment of certain 1983 corn and grain sorghum advance deficiency payments. Deficiency payments are made to producers who participate in ASCS programs when average market prices for their commodities are lower than set, or legally established, target prices. ASCS farm commodity programs are financed through the Commodity Credit Corporation (CCC), a government entity for which ASCS provides operating personnel.

We undertook this review because of our concern that the policy decision may not have received adequate fiscal and legal review prior to implementation. We were also concerned that the deferral of repayment refunds for up to 6 months could have resulted in additional interest cost to the federal government.

Section 120 of the Omnibus Budget Reconciliation Act of 1982 (the 1982 act) provided that refunds of unearned 1983 advance corn and grain sorghum deficiency payments were due at the end of the marketing year for the crop for which such payments were made, in this case on September 30, 1984. However, a March 1984 ASCS policy decision deferred refunds of these unearned advances for 1984 corn and grain sorghum program participants until after April 1, 1985, when the 1984 deficiency payment rates would be determined for the commodities. According to ASCS officials the refund policy was revised to correct a problem ASCS had encountered in administering the program at county offices and to provide an additional enrollment incentive for the 1984 corn program.

We found little programmatic analysis to support ASCS' decision to revise the policy. The deferred collection of these funds may also have resulted in an additional interest cost to the federal government. However, this possible cost was not considered or analyzed during the decisionmaking process.

We also found that ASCS' decision to revise the policy was made without the benefit of a prior review by the Department of Agriculture's (USDA) Office of General Counsel. We believe that a review by that office would have been appropriate to determine whether the change was consistent with the requirements of the 1982 act and the Federal Claims Collection Standards.<sup>1</sup> In light of this and a recent request by USDA's Inspector General, we are currently reviewing the legal issues raised by ASCS' decision to revise the collection policy. Other recent ASCS decisions also raise concerns about the appropriateness of making policy and program decisions that have legal implications without the benefit of a legal review by USDA's Office of General Counsel prior to approval and implementation. We believe that major policy and program changes should be fully analyzed and reviewed by the affected organizational units within ASCS and USDA as a whole.

#### OBJECTIVES, SCOPE, AND METHODOLOGY

Our objectives in doing this review were to evaluate the supporting programmatic and legal justifications for ASCS' policy decision to defer certain repayments and determine whether there is any additional cost the government could incur as a result of this policy change.

During our work we interviewed ASCS headquarters officials involved in, or having responsibility areas affected by, the policy change. In addition, in determining the budgetary impact of the policy change, we interviewed ASCS Kansas City Management Office officials in Kansas City, Missouri. This office is a key administrative field office for ASCS programs. As such, it provides technical direction, application, and coordination of automatic data processing systems relating to ASCS' financial and programmatic operations and serves as the operational contact point for accounting transactions.

We also reviewed and analyzed applicable legislation, documents, and files pertaining to the revised policy. Using data as of July 27, 1984 (the latest available), we developed a methodology for estimating the potential interest cost to the government as a result of ASCS' decision to delay the collection of certain advance deficiency payments.

We coordinated our review efforts with those of USDA's Office of the Inspector General (OIG) to avoid any duplication. We

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<sup>1</sup>The Federal Claims Collection Standards (the Standards) are government-wide debt collection regulations authorized by the Federal Claims Collection Act of 1966 (Public Law 89-508) as amended by the Debt Collection Act of 1982 (Public Law 97-365). These standards apply to the administrative handling of the federal government's civil claims for money or property. CCC's Board of Directors, through Docket No. CZ 161a, determined that the Federal Claims Collection Standards would be applicable to all CCC collections.

contacted OIG officials and reviewed their documentation concerning the OIG's report on the Collection of 1983 Advance Payments for Corn and Grain Sorghum.<sup>2</sup> This report states that ASCS' policy conflicts with good cash management practices and is inconsistent with USDA's policies to promote prompt and effective collection of amounts owed the government. The report also notes that the OIG was concerned that this policy was not in accordance with the provisions of the 1982 act regarding refunds of unearned advance deficiency payments and the provisions of the Federal Claims Collection Standards regarding the collection of receivables. The OIG recommended, among other things, that ASCS revise its policy to provide for the collection or establishment of claims by the end of the marketing year for all corn and grain sorghum advance deficiency payments. Moreover, because of the legal concerns raised in its report, the OIG asked us to provide a decision on these legal issues.

Due in part to the OIG's request, we are reviewing the legal issues raised by ASCS' decision to revise the collection policy. Specifically, we are reviewing the applicability of the 1982 act and the Federal Claims Collection Standards to ASCS' revised policy in light of the authority granted to CCC in the Commodity Credit Corporation Charter Act (Public Law 80-89) and other pertinent legislation.

We made our review from May through October 1984, in accordance with generally accepted government auditing standards.

#### BACKGROUND ON 1983 DEFICIENCY PAYMENTS

In fulfilling its responsibility to stabilize farm income and prices, USDA offers producers of certain commodities the opportunity to participate in programs that provide, among other things, a number of income protection benefits. These programs are administered within USDA by ASCS and are collectively called farm commodity programs. The three major elements of a farm commodity program generally include production adjustments, loans, and direct payments.

Production adjustments are designed to help control the amount of planted acres during a given crop year. They permit ASCS to control commodity production and inventory levels from year to year. Under the production adjustment aspects of a farm program, producers must take a certain percentage of their cropland out of production before becoming eligible for farm

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<sup>2</sup>Letter Report 3621-9-KC (PIK-52) dated June 21, 1984, addressed to the Under Secretary of Agriculture for International Affairs and Commodity Programs. (The Under Secretary is also the ex officio President of CCC.)

program benefits. These benefits generally include commodity loans and direct payments.

Commodity loans are made to eligible producers who agree to store their commodities and use them as loan collateral. The producer can either pay back the loan or forfeit the commodity to the government when the loan comes due. If the commodity is forfeited, the government takes possession of the commodity, and it becomes part of the government's inventory. Commodity loans serve several functions: they provide a source of credit to farmers, help to even out marketings, and support prices by acting as a floor under the market price.

ASCS supplements farm incomes by directly paying producers diversion and deficiency payments. Diversion payments are cash payments made to producers at a specified rate for taking a certain percentage of their cropland out of production. Deficiency payments are cash payments made directly to producers of wheat, corn, grain sorghum, barley, oats, rice, and cotton to supplement the producers' incomes when the market prices for these commodities are low. The deficiency payment rate is equal to the difference between a "target" price established by law and the average market price for the first 5 months of the marketing year<sup>3</sup> for each commodity (except cotton)<sup>4</sup> or the ASCS national commodity loan rate level, whichever is higher.<sup>5</sup> Deficiency payments are usually made after the first 5 months of the marketing year; however, ASCS has the option of advancing a portion of the deficiency payment to producers at the time of enrollment. The advance payment is based on projected deficiency payment rates.

The 1982 act, among other things, required that if production adjustments were in effect for the 1983 crop year, then advance deficiency payments were to be made available to producers after October 1, 1982, at 50 percent of the projected deficiency payment rate. In addition, the 1982 act required that if the advances were unearned--if the average market price was higher than both the target price and the loan rate at the end of the first 5 months of the marketing year--then they should be refunded by the end of the marketing year, September 30 for corn and grain sorghum.

In September 1982 USDA announced the provisions of the 1983 corn and grain sorghum production adjustment program with a sign-up period from October 1, 1982, through March 31, 1983.

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<sup>3</sup>For corn and grain sorghum, the marketing year begins on October 1 and ends on September 30.

<sup>4</sup>For upland cotton ASCS uses the average market price received during the calendar year; and for extra long staple cotton, ASCS uses the first 8 months of the marketing year.

<sup>5</sup>Target prices, market prices, and loan rates for corn and grain sorghum are expressed in terms of dollars per bushel.

Participating corn and grain sorghum producers were eligible for advance deficiency payments equal to one half of the total estimated deficiency payment when they signed up for the program. The deficiency payment rate was estimated at 21 cents a bushel for corn and 20 cents a bushel for grain sorghum. Hence, for participating in the 1983 program, corn and grain sorghum producers could have received advance payments at the rate of 10 1/2 and 10 cents, respectively. ASCS advised producers that if the final deficiency payment earned was less than the advance payment, they would be required to repay the excess. Corn and grain sorghum producers received a total of \$320.8 million in 1983 advance deficiency payments.

In September 1983 USDA announced the provisions of the 1984 corn and grain sorghum program. However, unlike the previous year's program, it did not include provisions for advance deficiency payments. The sign-up period for the 1984 program was from January 16, 1984, through February 24, 1984; but in mid-February it was extended to March 16.

On April 2, 1984, USDA announced that no deficiency payments were due corn and grain sorghum producers who had participated in the 1983 program because national average market prices for the two commodities were above their established target price levels for the first 5 months of the marketing year. Therefore, according to the requirements of the 1982 act, refunds of these 1983 advance payments were due to ASCS by September 30, 1984.

However, on March 9, 1984, 7 days before the sign-up period for the 1984 program ended, ASCS instructed its county offices that the policy on refunds of advance corn and grain sorghum deficiency payments had been revised. The instructions stated that demands to repay 1983 corn and grain sorghum deficiency payments were to be delayed for all producers choosing to participate in the 1984 programs. ASCS instructed the county offices to contact all producers who complied with the provisions of the 1983 corn and grain sorghum program and who had outstanding advance deficiency payments. The county offices informed these producers that if they signed up for the 1984 program for one or more crops, the demand for a refund would be delayed until after the final 1984 deficiency payments were determined for the crops for which they had enrolled. For example, if a corn producer had an outstanding 1983 advance deficiency payment for corn and the producer enrolled in the 1984 corn program, the demand for the outstanding 1983 corn deficiency payment would be delayed from October 1, 1984,<sup>6</sup> until April 2, 1985, the day after the 1984 corn deficiency payment rate would be determined. The producers, however, were not told that interest would be charged on their outstanding advance deficiency payments.

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<sup>6</sup>ASCs' collection policy requires that a demand letter be issued the day after a debt is due: a debt due September 30, 1984, would be demanded October 1, 1984.

LIMITED JUSTIFICATION AND ANALYSES  
IN SUPPORT OF POLICY DECISION

We discussed the reasons for the policy change with ASCS' Assistant Deputy Administrator for State and County Operations (DASCO). DASCO is responsible for developing policies and regulations for programs and activities concerning farm price support and production adjustment programs, as well as other ASCS programs. The assistant deputy administrator made this policy decision and signed and approved all ASCS notices related to this policy that were forwarded to ASCS state and county offices for implementation. He told us that the policy had been changed for two reasons: (1) to correct an administrative problem regarding premature demand letters and (2) to provide an additional enrollment incentive for the 1984 corn program.

Premature demand letters

The assistant deputy administrator said that in violation of ASCS procedures, some county offices had sent premature demand letters to producers for refunds of 1983 advance corn and grain sorghum deficiency payments. These demands were premature--issued before the final deficiency rates were determined on April 1, 1984--and in some cases inappropriately demanded refunds prior to the end of the marketing year.

The assistant deputy administrator explained that the activity regarding premature demand letters had to be reversed and that he was also concerned that corn program participation was low. He noted that he was mainly concerned about the corn program because it is much larger than the grain sorghum program. (For example, over 1,300,000 farms produce corn while only about 300,000 farms produce grain sorghum.) He addressed both problems simultaneously by deferring demands for refunds of corn and grain sorghum advance deficiency payments from producers who enrolled in the 1984 program. He said this would correct the county office problem and would provide an additional incentive to producers to enroll in the 1984 corn program (the incentive being the interest-free use of these funds). He also said that he made the policy decision and that he had to act quickly in notifying the states of the revised policy because the program sign-up period was to end on March 16, 1984.

Within DASCO we contacted the five area directors to determine if they were aware that the county offices in their areas had sent premature demand letters. (The area offices are located in Washington, D.C., and act as links between ASCS state offices and DASCO). We also contacted officials in the Cotton, Grain, and Rice Price Support Division (CGRD) of DASCO to determine their awareness of the problem, its extent, and the possible receipt of letters from corn and grain sorghum producers complaining of receiving premature demand letters. CGRD, among other things, develops operating policy, regulations, and procedures pertaining

to production adjustment, loan, and direct payment programs for corn, grain sorghum, and other commodities.

DASCO officials identified two ASCS county offices in Indiana--De Kalb and Whitley counties--where premature demand letters were believed to have been sent. ASCS' attention had been drawn to these county offices because, during the course of a meeting at USDA headquarters that occurred the week of March 5, 1984, two producers from those counties complained to the assistant deputy administrator that they had received demand letters for refunds of their deficiency payments. Our review of ASCS records showed that De Kalb County had sent the correct letter to producers. In Whitley County, however, we found that letters demanding repayment of advance deficiency payments had been sent to corn producers on February 29. The ASCS County Executive Director realized that the letters were premature and on March 2 sent follow-up letters to the same producers reversing the earlier correspondence and notifying them that the advance payments were not yet due.

When the two producers from De Kalb and Whitley Counties told the assistant deputy administrator they had received demand letters for their 1983 advances, DASCO headquarters officials did not verify whether the problem existed on a more widespread basis. The ASCS State Executive Director (SED) in Indiana told us that during the week of March 5 the assistant deputy administrator telephoned him concerning the producers' complaints. In response, the SED checked on the actions of these county offices. Since the SED found that no problem existed in De Kalb County and the problem was being corrected in Whitley County, he considered the matter to be dropped. He said, however, that he did not advise any ASCS headquarters officials of the status of these county office actions during March 1984.

We asked ASCS officials if they could provide any additional support on the extent of the problem in the county offices. They told us that they knew of no other examples.

#### Low program participation

Actual program sign-up information in any given year is not collected or released by ASCS until the program sign-up period ends. However, the estimated program participation levels for the announced farm programs are available within ASCS in January of each year when the President's budget is submitted to Congress. The estimated 1984 corn program participation rate was 25 percent. We asked the assistant deputy administrator the extent to which 1984 corn program sign-up was achieving the estimated participation rate.

The official said that corn program participation is historically low. He explained that he believed 1984 corn program

participation was low on the basis of feedback he had received from producers and farm groups in various informal meetings. However, he did not know USDA's estimated 1984 corn program participation rate--25 percent--and he could not expand upon the extent to which program sign-up was achieving ASCS' estimated participation rate. He also had no analysis of the extent to which the revised collection policy was expected to increase program sign-up. Thus, ASCS' decision to change the policy was based on the official's impression that participation in the 1984 corn program was low and that permitting producers to defer repayment of 1983 advance deficiency payments would induce greater participation in the 1984 program.

FINANCIAL MANAGEMENT  
IMPACTS NOT CONSIDERED

Although ASCS' policy change had a direct impact on program costs within ASCS, the assistant deputy administrator had not analyzed or considered this impact during the decisionmaking process. Within ASCS the Fiscal Division is responsible for formulating and administering ASCS' claims policy. The Deputy Administrator for Management, however, as well as officials from ASCS' Fiscal Division, told us that they had played no role in the decisionmaking process on the revised policy. Because this policy affects program costs and claims collection activity, we believe that the Fiscal Division should have been requested to provide and should have provided analysis for consideration in the decisionmaking process.

The revised policy caused the government to incur additional interest cost because it did not notify producers, in accordance with section 102.13 of the Standards, that interest would be charged during the deferral period.<sup>7</sup> For 1984 program participants this deferral period could have been as long as 6 months--from the original due date of September 30, 1984, until after the 1984 deficiency payments were to be determined on April 1, 1985. We estimate that, at the time ASCS decided to revise its collection policy for 1983 advance deficiency payments for corn and

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<sup>7</sup>Section 102.13 of the Standards provides that interest assessments made by government agencies, including USDA, generally begin to accrue only after a "notice of the debt and the interest requirements is first mailed or hand-delivered to the debtor."

grain sorghum producers, the policy decision could have caused the government to incur up to \$13 million<sup>8</sup> in additional interest cost. However, because the 1985 farm programs authorized advance deficiency payments effective October 15, 1984, the potential additional interest cost associated with this policy decision would probably be much less. This occurs because the majority of the outstanding advances could have been recovered in October or November 1984 rather than April 1985 by offsetting 1985 advance deficiency payments against the 1983 overpayments. Nonetheless, we believe it is important to emphasize that any additional cost that may be incurred by ASCS in permitting repayment deferrals of 1983 advance deficiency payments was not considered prior to ASCS' decision to revise the policy.

#### LEGAL IMPLICATIONS NOT CONSIDERED

ASCS' revised policy to defer the collection of advance deficiency payments for producers participating in the 1984 corn and grain sorghum programs may be affected by the 1982 act and the Federal Claims Collection Standards that CCC has adopted into its "dockets,"<sup>9</sup> which are, in effect, its rules and regulations. Accordingly, ASCS' decision raises both legal and financial management considerations. Yet, this policy change was not coordinated with USDA's Office of General Counsel; and ASCS' Fiscal Division was not involved in the decisionmaking process. After we began reviewing whether the revised policy is consistent with the requirements of the 1982 act and the Standards, USDA's Inspector General requested a decision on this matter.

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<sup>8</sup>This figure represents the simple interest on the outstanding balance of 1983 corn and grain sorghum deficiency payments as of July 27, 1984, of \$240 million at the rate of 10.93 percent for a 6-month period. The total outstanding balance was used because the number of corn and grain sorghum farms enrolled in the 1984 program exceeded the number of corn and grain sorghum producers with outstanding advances. The 10.93 rate represents the yield on Treasury bills and notes maturing in April 1985 as reported for October 1, 1984, transactions. This rate was used because the maturity period was comparable to the period during which deficiency payments could be deferred--October 1, 1984, through April 2, 1985--and the yield on outstanding marketable Treasury securities usually approximates the Treasury's cost of borrowing. A 6-month period was used because it generally represents the maximum time period that refunds could be delayed for corn and grain sorghum producers.

<sup>9</sup>A docket is, in effect, a CCC rule or regulation relating to the establishment of a program or policy. It contains, among other things, a summary outlining the significance of the proposal, a budget statement indicating the availability of funds, and an opinion from the General Counsel regarding the legal aspects of the proposal.

The 1982 act required that refunds of 1983 advance corn and grain sorghum deficiency payments be due September 30, 1984. Yet, ASCS' revised policy deferred the demand for these funds beyond September 30, 1984. The USDA Inspector General asked us to determine whether this may conflict with the 1982 act's refund requirement.

The Federal Claims Collection Standards are government-wide debt collection regulations authorized by the Federal Claims Collection Act of 1966 as amended by the Debt Collection Act of 1982. These standards apply to the administrative handling of the federal government's civil claims for money or property. The Standards generally require that federal agencies take aggressive and prompt action to collect debts and that interest, penalties, and administrative costs be assessed on debts. In addition, the Standards allow agencies to suspend or terminate claims provided that the claims meet specific criteria. Among other things, section 104.2(b) of the Standards provides that when collection of a debt is deferred, interest should be assessed on the debt.

USDA regulations state that the Federal Claims Collection Standards are applicable to USDA and that its various agencies must collect debts in accordance with the Standards. The CCC Board of Directors through CCC Docket No. CZ 161a determined that the Federal Claims Collection Standards would be applicable to all CCC collections. However, while the revised policy directly concerned ASCS' debt collection activities, ASCS officials did not involve ASCS' Fiscal Division, the organizational unit responsible for formulating and administering ASCS' claims policy, in the decisionmaking process.<sup>10</sup>

ASCS officials advised us that they did not seek legal advice during the decisionmaking process. Furthermore, officials from USDA's General Counsel advised us that they did not review and clear the ASCS administrative notices implementing the revised policy. ASCS' administrative handbooks are not clear regarding when the Office of General Counsel is to review and clear administrative notices.

Specifically, ASCS' Directive Management handbook prescribes a directives' management program of which one objective is to produce clear, concise, and complete instructions that comply with governing laws and regulations and ASCS policies and procedures. Part six of the handbook requires that (1) all deputy administrators or their designees shall clear every directive affecting any office reporting to them and (2) Washington offices that are technical authorities on the subject shall be included in the formal clearance (presumably including the Office of General Counsel and ASCS' Fiscal Division). ASCS Organization and Operating Relationships handbook also requires that all policy decisions be documented by a CCC board docket, a Federal Register document, or

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<sup>10</sup>The Director of the Fiscal Division is also CCC's Controller.

a staff paper. Staff papers are to be prepared as informal letters and are to cover such items as economic and program analyses, program estimates and projections, and budgetary planning information.

Furthermore, ASCS' handbook entitled CCC Board Dockets and Special CCC Board Memorandums prescribes policy and procedures for preparing and processing CCC dockets and special memorandums. A CCC board docket is a group of documents constituting a proposal to the board that a program or policy be established or changed; a CCC board memorandum covers urgent program or policy matters. Both CCC dockets and special memorandums must be accompanied by a budget statement and a memorandum prepared by the Office of General Counsel on the legal aspects of the policy or program proposal. Current practices, however, do not comply with these procedures. The Director, Audits and Dockets Staff,<sup>11</sup> told us that prior to crop year 1982 a docket had been generally issued for each annual commodity program. However, he said that after the Agriculture and Food Act of 1981 (Public Law 97-98) was enacted, dockets covering a 4-crop-year period--crop years 1982 through 1985--were issued. Under this process dockets are not issued for annual crop year programs. Thus, each annual program is no longer subject to prior legal review.

Previously, ASCS' administrative handbooks required a prior legal review of annual policy and program decisions as part of the docket process. Since CCC now issues dockets covering 4-year periods, annual policy and program decisions, like ASCS' revised collection policy, are no longer subject to prior review by the Office of General Counsel. Neither a CCC docket nor a CCC board memorandum was prepared on this policy decision. We have been reviewing whether delaying demands for 1983 corn and grain sorghum deficiency payments is consistent with the requirements of the 1982 act, CCC's own collection policy, and the Federal Claims Collection Standards. During our review USDA's OIG, in its letter report 3621-9-KC (PIK-52), dated June 21, 1984, to USDA's Under Secretary for International Affairs and Commodity Programs questioned ASCS' decision to defer collection. At the request of USDA's Inspector General, we are now reviewing the legal issues raised by ASCS' revised collection policy.

#### OTHER INSTANCES OF ASCS PROGRAMS' RAISING LEGAL QUESTIONS

ASCS' decision to defer 1983 advance deficiency payment refunds without advance legal review was not an isolated instance of a decision being made without legal review. In other work on ASCS programs, we noted two other instances in which program decisions were not supported by adequate legal opinions.

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<sup>11</sup>The Director, Audits and Dockets Staff, is also the Deputy Secretary of CCC.

During our review of USDA's 1983 Payment-In-Kind (PIK) Program,<sup>12</sup> officials from USDA's Office of General Counsel told us that they had not issued a legal opinion on whether the statutory \$50,000 payment limitation applied to payments-in-kind. In testimony before the Subcommittee on Select Revenue Measures of the House Ways and Means Committee on November 3, 1983, the USDA Associate General Counsel said also that the General Counsel's office does not have a "formal legal opinion" on this matter. The official also noted that uncertainty existed on the question of the applicability of the payment limitation to PIK payments but that USDA ultimately concluded that it had the authority to proceed with the PIK program without applying the payment limitation to PIK payments.

We also found that a CCC docket had not been prepared on the PIK program. Although a January 11, 1983, analysis of PIK was submitted to CCC's Board of Directors on February 16, 1983, for informational purposes only, this analysis was submitted after the program was initiated. Consequently, the board had no opportunity to consider the merits of the program.

Section 1101 of the Agriculture and Food Act of 1981 limits the total amount of payments (excluding disaster payments)<sup>13</sup> that a person shall be entitled to receive under one or more of USDA's annual farm programs for wheat, corn, grain sorghum, upland cotton, and rice to \$50,000. The 1983 farm programs for these commodities included a PIK option wherein producers choosing to participate in the program received commodities rather than cash for removing land from production. In the regulations establishing the PIK program, USDA concluded that commodity payments under the PIK program were not subject to the \$50,000 payment limitation. Like the ASCS decision on refunding 1983 advance corn and grain sorghum deficiency payments, the decision that the \$50,000 payment limitation did not apply for 1983 PIK payments did not have the benefit of a formal legal opinion prior to implementation.

In an October 31, 1983, informal, internal legal opinion, transmitted to the Secretary of Agriculture on November 1, 1983,<sup>14</sup> we concluded that the \$50,000 limitation applied to commodity payments under the PIK program. Although USDA believed that it had acted properly in not applying the limitation to the 1983 PIK payments, in its 1984 PIK program and subsequent crop year regulations (7 C.F.R. Part 770.6), USDA applied the \$50,000 limitation to 1984 PIK payments, citing as its reason the uncertainty created by our

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<sup>12</sup>Testimony on the Department of Agriculture's Payment-In-Kind Program, Nov. 3, 1983, before the Subcommittee on Select Revenue Measures of the House Ways and Means Committee.

<sup>13</sup>Disaster payments are federal funds provided to farmers when either (1) planting is prevented or (2) crop yields are abnormally low because of adverse weather and related conditions.

<sup>14</sup>Questions Regarding the Legality of the Payment-In-Kind Program, B-211462 - O.M., Oct. 31, 1983.

disagreement on this matter. We have estimated that this avoided \$288 million in 1984 PIK payments.

Similarly, our ongoing review of ASCS' honey price-support program<sup>15</sup> disclosed that ASCS' administration of its honey price-support program in 1983 and 1984 was not in compliance with existing legislation. Specifically, the 1983 and 1984 parity prices<sup>16</sup> for honey were not computed in accordance with Section 301(a) of the Agricultural Adjustment Act of 1938 as amended, which requires that the parity price for honey in any given year must be based upon 10 years of price data. In March 1982 USDA stopped collecting the information necessary to calculate the parity price for honey based upon 10 years data because of budget restrictions. Consequently, the 1983 parity price was calculated on the basis of 9 years of data; and the 1984 parity price, on the basis of 8 years of data. We found that legal advice had not been sought on this point prior to its implementation and that the CCC docket on the Honey Loan and Purchase Program that covers crop year 1982 and subsequent years had not been updated since June 1982.

We asked USDA's Associate General Counsel for Production, Distribution, and Assistance<sup>17</sup> whether he agreed with our reading of section 301(a) and, if so, what legal basis supported USDA's use of less than a 10-year period for honey's parity price. He responded that there is no statutory basis for using a price history shorter than 10 years for honey's parity price. Furthermore, he stated that this matter had been discussed with USDA officials who are responsible for the administration of the program and that steps are now being taken to ensure that the parity price of honey is determined in accordance with the requirements of section 301(a).

## CONCLUSIONS

ASCS had limited justification and analyses to support its policy decision deferring repayment of 1983 advance deficiency payments made to corn and grain sorghum producers. The primary consideration in revising the policy was to reverse the alleged actions of some county offices that had prematurely sent letters to producers demanding the repayment of 1983 advance deficiency payments. Yet, ASCS did not know and did not determine whether

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<sup>15</sup>The honey price-support program was established by legislation in 1949 and first put into effect in 1950. The act requires that the price of honey be supported by means of loans, purchases, and other operations at not less than 60 percent nor more than 90 percent of the parity price.

<sup>16</sup>Parity price is the price that gives the commodity equivalent purchasing power to a 1910-14 base price period.

<sup>17</sup>The Associate General Counsel for Production, Distribution, and Assistance is also the Associate General Counsel for CCC.

sending premature demand letters had occurred in isolated instances or had been a widespread occurrence. Based on discussions with and records provided by ASCS headquarters officials, we could identify only one county that actually sent premature demand letters. Even in this one instance, the error had been corrected before ASCS headquarters was aware of this problem.

Further, while participation in the 1984 corn program was a secondary consideration in this policy decision, the anticipated impact of the policy on participation was not analyzed during the decisionmaking process. Although this policy could have imposed interest cost upon the government, the policy's cost was not analyzed or considered during the decisionmaking process. We question whether, at the time the decision was made, a sufficient basis to revise the policy existed and believe that the basis for the policy change and its impacts warranted the collection and review of more information in order to ensure that the change was justified.

ASCS' policy change was not reviewed by USDA's Office of General Counsel, and the Fiscal Division was not involved in the decisionmaking process. In our opinion the issues surrounding ASCS' deferral decision should have been fully addressed and resolved by ASCS' Fiscal Division and USDA's Office of General Counsel prior to deciding on a policy revision.

Because of this policy decision, as well as ASCS' prior decisions regarding the applicability of the \$50,000 limitation to PIK payments and the parity computation for honey price-support levels, we are concerned that major policy and program changes may not be fully analyzed and reviewed by the affected organizational units within ASCS and USDA as a whole.

#### RECOMMENDATIONS TO THE SECRETARY OF AGRICULTURE

We recommend that the Secretary of Agriculture require the Administrator of ASCS to

- issue administrative notices to ASCS' Directive Management and ASCS Organization and Operating Relationships handbooks to reinforce the need for staff compliance with existing procedures requiring that policy decisions be fully documented, analyzed, reviewed, and approved by affected organizational units within ASCS, prior to implementation;
- amend ASCS' Directive Management and ASCS Organization and Operating Relationships handbooks to specifically require that policy and program changes having potential legal constraints or impacts be fully reviewed and approved by USDA's Office of General Counsel prior to implementation; and

- issue an administrative notice to ASCS' CCC Board Dockets and Special CCC Board Memorandums handbook to reinforce the need for staff compliance with existing procedures requiring that Office of General Counsel memorandums on the legal aspects of a policy or program accompany CCC dockets and board memorandums.

AGENCY COMMENTS AND  
OUR EVALUATION

ASCS provided us with oral comments on this report in April 1985. ASCS offered one general and several specific comments, each of which is discussed in the following paragraphs.

Overall, ASCS asserted that the recommendations regarding the need for the legal reviews contained in the report do not reflect the general thrust of the review that was directed at the advance deficiency issue. While the focus of our report was on the decisionmaking process behind the agency's 1983 advance deficiency repayment policy, we found two other decisions that raised concerns about the lack of adequate prior legal review. Specifically, these were ASCS' decision regarding the payment limitation as it applied to 1983 PIK payments and its decision regarding the calculation of parity prices for the 1983 and 1984 honey program. Each of these instances demonstrated that major policy and program changes with significant legal implications were not fully analyzed and reviewed within ASCS and USDA. As such, we believe that collectively these three instances raise questions about the decisionmaking process within ASCS and warrant the recommendations made in this report.

ASCS also commented that because of the broad powers granted to the Secretary, USDA operates under the complete control and authority of the Secretary. Accordingly, he sets all policy and mutually, with appropriate officials, determines the need for legal decisions. ASCS further commented that the Secretary participated in or is aware of all the decisions--policy and legal--raised in this report.

We acknowledge that the Secretary of Agriculture is granted broad powers under the CCC Charter Act and other legislation, and we do not take issue with this point. Nevertheless, this does not necessarily mean that the Secretary's broad powers are unlimited. The primary point of this report is that regardless of who within USDA makes decisions calling for major policy or program changes, those decisions need to be supported by detailed analysis and legal review prior to implementation. It is not a matter of who makes the decision but, more importantly, whether it is justified by the evidence and whether it is legal.

Further, regarding the legal issues mentioned in the report, ASCS commented that the report does not indicate whether we queried USDA's General Counsel to determine whether he provided legal counsel to the Secretary on these matters. ASCS' comment on this point is accurate--we did not query the General Counsel as to

whether he personally provided legal counsel to the Secretary and, accordingly, have no way of knowing whether any informal communications took place at that level. Nonetheless, we did contact each of the responsible attorneys in USDA's Office of General Counsel who would have done the detailed legal review of these issues. The following summarizes the information we were provided by these officials.

Regarding the legal issues surrounding the decision to defer the collection of advance deficiency repayments, we were told that the Office of General Counsel did not review the decision prior to its implementation. Regarding the legal requirements of administering the honey price-support program, we found that legal advice had not been sought prior to implementation. In fact, USDA attorneys have subsequently agreed that the calculations of honey parity prices were not proper in 1983 or 1984. Regarding the decision on not applying the \$50,000 payment limitation to 1983 PIK payments, we met with the cognizant Associate General Counsel in USDA who told us that it had not issued a legal opinion on whether the payment limitation applied to 1983 PIK payments. This same official made similar statements in testimony before a House subcommittee as noted on page 12 of this report.

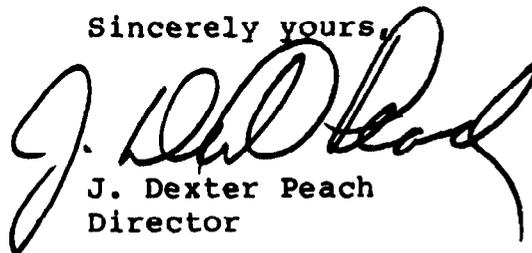
Finally, the Secretary's office provided us with a letter outlining how the deferred collection of 1983 advance deficiency payments complied with the provisions of the Federal Claims Collection Standards. (A copy of the letter is included as appendix I.) Essentially, the letter states that the Department complied with the Standards. As pointed out on page 3 of this report, we are reviewing the legal issues raised by ASCS' decision to revise the collection policy. As part of that review, we will also consider the information included in the letter.

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As you know, 31 U.S.C. 720 requires the head of a federal agency to submit a written statement on actions taken on our recommendations to the Senate Committee on Governmental Affairs and the House Committee on Government Operations not later than 60 days after the date of the report and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report.

We are sending copies of this report to the Director, Office of Management and Budget; the Administrator of the Agricultural Stabilization and Conservation Service; various Senate and House committees; and other interested parties.

Sincerely yours,



J. Dexter Peach  
Director



DEPARTMENT OF AGRICULTURE  
OFFICE OF THE SECRETARY  
WASHINGTON, D. C. 20250

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The Honorable Robert H. Hunter  
Assistant General Counsel  
Office of the General Counsel  
United States General Accounting Office  
Washington, D.C. 20548

Dear Mr. Hunter:

This is in response to your letter of January 3, 1985, regarding the collection of amounts due from agricultural producers under the 1983 Feed Grain Program. It is the Department's position that the Commodity Credit Corporation's (CCC) collection of advance deficiency payments is consistent with the Federal Claims Collection Standards (FCCS), which CCC has adopted as a matter of policy, and with CCC's own regulations regarding collection and advance deficiency payments. We hope that our letter will answer your questions adequately.

The Agricultural Act of 1949 was amended by the Omnibus Budget Reconciliation Act of 1982 to require that the Secretary of Agriculture make advance deficiency payments to producers who participated in the 1983 Feed Grain Program. The 1949 Act also provided that, if no such payments were earned, producers would have to refund the payments. The repayment would become due at the end of the 1983 crop marketing year, which for feed grains is September 30, 1984. Market prices for corn and grain sorghum in 1983 proved to be higher than established (target) prices. Therefore, no deficiency payments for those commodities were earned.

Your letter asks for information concerning "the decision by the Agricultural Stabilization and Conservation Service (ASCS) and the Commodity Credit Corporation (CCC) to defer the collection of . . . overpayments of 1983 advance deficiency payments for corn and grain sorghum products." In fact, collections of the overpayments began on October 1, 1984. Producers who did not participate in 1984 commodity programs were issued letters on October 1, 1984, which demanded repayment of the advance corn and grain sorghum deficiency payments, and interest has been assessed by CCC with respect to the outstanding indebtedness of those producers who have not made timely payment. In addition, CCC has, since that date, set-off the overpayments against payments of any kind that would otherwise have been made to producers. Demand letters are to be issued in April 1985 to 1984 program participants against whom collection was not made by set-off by that date.

The decision of the Corporation with respect to the repayment of the 1983 corn and grain sorghum advance deficiency payments was consistent with CCC regulations as well as the FCCS. The regulations governing the refunds of advance deficiency payments which were applicable to the 1983

The Honorable Robert H. Hunter

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Feed Grain Program are found at 7 C.F.R. § 713.104(d). These regulations specify that interest shall be charged on the amount of an advance payment if the producer does not earn the payment as a result of a failure to comply with program requirements or because the producer planted for harvest less than a specified percentage of the commodity which the producer certified would be planted for harvest. In addition, these regulations specify that the provisions of 7 C.F.R. § 713.103(e) are applicable to advance deficiency payments which are not earned. The regulations at 7 C.F.R. § 713.103(e) provide that a person shall refund to OCC any amounts which represent payments which exceed amounts actually earned under the commodity programs and further provide that late payment charges may be assessed under 7 C.F.R. Part 1403.

OCC's regulations at 7 C.F.R. Part 1403, consistent with the FCCS, provide that interest in the form of late payment charges will be charged only with respect to delinquent debts. The phrase "delinquent debt" is defined at 7 C.F.R. § 1403.2(d) as "A payment that is overdue in accordance with the terms of an arrangement for payment as provided in the contract, agreement or notification of indebtedness,..." OCC had determined that a particular class of debts, those owing from 1984 program participants, would be collected to the extent possible by set-off. Accordingly, these producers did not receive demand letters on October 1, 1984 (See 4 C.F.R. § 102.2(e)) and the notification of indebtedness to these producers provided that the repayment of the advance deficiency payments would have to be made on April 1, 1985. The notification of indebtedness to those producers was a component of the overall policy OCC had decided to pursue in administering its programs and handling its claims. Since, as a function of this policy, the notification of indebtedness to 1984 program participants provided that their debts would have to be paid on April 1, those debts will not become delinquent until May 1 (See 7 C.F.R. § 1403.3.(b)(2); Cf. 4 C.F.R. § 102.13(g)). With respect to whatever amounts that were not collected by April 1, 1985, i.e., those repayments from producers against whom set-off was expected but was not effectuated for a variety of reasons, demand letters are to be issued and late payment charges will accrue effective May 1.

When an agency determines to pursue claims by administrative set-off, it is not required to issue the demands for payment otherwise required by 4 C.F.R. § 102.2(a)-(c). See 4 C.F.R. § 102.2(e). The decision to collect by administrative set-off is to be made in the sound exercise of agency discretion. See 4 C.F.R. § 102.3(a)(2). The decision to collect overpayments by set-off served several policy purposes. It gave producers an additional incentive to participate in the 1984 Acreage Reduction Program, thus increasing the effectiveness of the 1984 program. Producers were able to earn additional program benefits which could be used to satisfy their indebtedness. In addition, legislation was enacted which revised the 1984 and 1985 commodity programs. (See Agricultural Programs Adjustment Act of 1984, Pub. L. 98-258, 98 Stat. 130 (1984).) The result was that advance payments would be made to 1985 program participants and that the period for producers to enter into contracts with OCC to participate in the 1985 commodity programs would begin at approximately the time that 1983 refund payments would be due from producers. Thus, the 1983 debts could be set-off against the 1985

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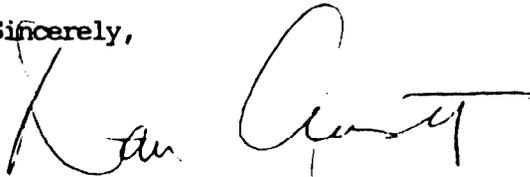
advance payments, thereby benefitting producers without serious delay in repayment. In sum, the action encouraged program participation and concomitantly simplified and facilitated collection.

The decision to coordinate collection of the 1983 corn and grain sorghum advance deficiency payments with administration of price support, payment, and cost-share programs with respect to 1984 and 1985 program participants proved manageable and effective. Of the total \$320.9 million in 1983 advance deficiency payments for corn and grain sorghum, only approximately \$59.5 million remained uncollected on March 31, 1985. Of this amount, \$19.7 million has already been set up as claims (i.e., the debts are delinquent). It is anticipated that all of the remaining \$39.8 million will be collected by set-off against 1984 final deficiency payments and 1985 advance payments. Approximately \$13 million will be set-off against the \$19.7 million in claims.

The purpose of the Commodity Credit Corporation is to stabilize, support, and protect farm income. 15 U.S.C. § 714. To allow the Corporation to fulfill these objectives, Congress has granted to CCC broad authority to administer commodity programs and to manage its fiscal affairs. See 15 U.S.C. §§ 714b, 714c. CCC adopted a policy in the collection of overpayments of 1983 corn and grain sorghum deficiency payments that was determined to be fair to both debtors and the Corporation and to improve the operation of commodity programs. The policy adopted contravenes neither the FCCS nor CCC's own regulations.

Thank you for your letter. We hope this information will be useful to you and would appreciate receiving a copy of your response to the Inspector General.

Sincerely,



DANIEL G. AMSTUTZ  
Under Secretary for International  
Affairs and Commodity Programs

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